

Alternative Dispute Resolution (ADR) for Civil Cases

When Trial Isn't the Best Way

With its formal rules and procedural protections, litigation leading to trial or (more often) to a negotiated settlement shortly before trial is the best process for some civil disputes—but not all. To some parties, a quicker resolution is more important than the protections afforded by litigation. Other parties believe they can design a resolution that is more satisfying than any remedy a court might order.

Several processes other than litigation and trial—commonly known as [alternative dispute resolution \(ADR\) processes](#)—are used effectively to resolve civil disputes (see “Most Common ADR Processes”). All are less formal than litigation and can be used early in the litigation process. Some, particularly mediation, give the parties more flexibility to shape the dispute resolution process and outcome.

The Judicial Council's long-range strategic plan includes support for ADR programs in the courts. When courts offer a broad range of ADR processes, they can better perform their essential function: resolving disputes in a fair, timely, appropriate, and cost-effective manner.

To help courts broaden their ADR options, the Judicial Council sponsored [pilot programs](#) from 2000 through 2003 in five superior courts to study the effects of early mediation of civil cases. After an assessment of the programs found substantial benefits (see Impacts of the Early Mediation Pilot Program), the Judicial Council and the Administrative Office of the Courts (AOC) increased their efforts to expand the use of mediation and other settlement programs for civil cases.

In 2004, the AOC surveyed superior courts about their current ADR programs, and 36 of 40 courts responded that they offered one or more ADR programs for civil cases: 33 offered judicial arbitration;

Most Common ADR Processes

- **Mediation:** A neutral person meets with the parties and their attorneys to facilitate communication and help them reach a voluntary and mutually acceptable resolution. The mediator typically helps clarify issues and identify options for resolving the dispute. Mediation is generally the least formal ADR process, the one in which the parties participate most directly and the one that places the greatest emphasis on reaching a voluntary agreement.
- **Settlement Conference:** A neutral person meets with the parties' attorneys, and sometimes with the parties themselves, to help negotiate a settlement. This conference is generally more formal than mediation, the parties usually participate less directly, the settlement officer is more likely to provide an evaluation of the case, and the parties are more likely to be pressured to settle. While settlement conferences have traditionally been scheduled close to trial, they can be used earlier.
- **Neutral Evaluation:** A neutral person considers relatively informal presentations by the parties' attorneys and provides an evaluation of the likely outcome at trial. The officer may also facilitate settlement discussions or help the parties agree on a discovery plan or on issues that prepare them for later settlement discussions.
- **Judicial Arbitration:** A neutral person considers evidence presented by the parties' attorneys and issues a written award resolving the dispute, which becomes binding unless a party formally rejects it within 30 days. Even if the award is rejected, it often helps the parties reach an agreement. Judicial arbitration is the most formal and adversarial of the common ADR processes, the one most similar to a trial.

32, settlement conferences; 26, mediation for small claims or other civil cases; 8, neutral evaluation; and 7, other ADR programs. A significant 40 percent (16 courts) said they wanted to offer new ADR programs, but many of these courts needed resources to do so.

In 2004–2005, the Judicial Council awarded grants to 9 courts to conduct needs assessments and plan ADR programs; 13 courts were awarded grants to implement new programs or improve existing ones.

Impacts of the Early Mediation Pilot Programs

- Of the 6,300 unlimited cases that participated in mediation during the first two years of the pilot programs, 58 percent settled as a direct result of the mediation. Of the 1,600 limited civil cases that went to mediation, 71 percent settled as a direct result.
- In all five courts, mediation parties and attorneys expressed satisfaction with the experience. In three courts the study found that attorneys were more satisfied with the court’s services even if their cases were not resolved in mediation.
- Attorneys in cases that settled at mediation estimated that their clients saved from 61 to 68 percent in litigation costs.
- Early mediation, along with early case-management conferences, significantly shortened the time needed to resolve cases.
- In four of the five pilot courts, the program reduced the number of motions or other pretrial events.
- In two of the courts, the number of cases going to trial decreased by 24 to 30 percent.

Positive Possibilities

Potential benefits of court-connected ADR programs include

- Making justice more accessible to parties
- Giving litigants more dispute-resolution process options
- Allowing a broader range of outcomes
- Increasing litigant satisfaction with the courts
- Resolving issues that might otherwise bring the parties back to court
- Settling more cases
- Shortening the time from filing to disposition of a case
- Saving time and money for the courts and the parties

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